

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL ACTION NO.: 1:08-CV-404**

**UNUM LIFE INSURANCE COMPANY )  
OF AMERICA, )**

**Plaintiff, )**

**v. )**

**BRIAN K. LEWIS, BRENDA SANFORD )  
and CYNTHIA SANFORD, )**

**Defendants. )**

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**CONSENT JUDGMENT**

This action is an interpleader filed by Unum Life Insurance Company of America (“Unum”) to determine entitlement to group life and accidental death benefits due on account of the death of Donna Lewis, and is governed by ERISA. The Defendants are the named beneficiary Brian K. Lewis (“Mr. Lewis”) and contingent beneficiaries Brenda Sanford and Cynthia Sanford (“the Sanfords”). The Sanfords have claimed entitlement to the proceeds at issue by Answer filed October 13, 2008. Upon Unum’s Motion, the Clerk entered default against Mr. Lewis on November 10, 2008, due to his failure to answer or otherwise plead to the Complaint within twenty days of service thereof.

The Sanfords have moved for summary judgment, contending that they are entitled to the benefits at issue. The Motion is supported by Affidavits which include as exhibits a Disclaimer, signed by Mr. Lewis on November 19, 2008, disclaiming any rights to policy benefits, and a copy of a Judgment and Commitment Active Punishment Felony form, documenting that Mr. Lewis was convicted, by his plea of guilty, to second degree murder of the insured Donna Lewis. The policy, attached to the Complaint as Exhibit A, provides at page UACL 0038, that “the share

of a beneficiary who is disqualified, will pass to any surviving beneficiaries in the order you designated.”

Mr. Lewis has failed to appear in this action, and has been notified by order dated December 5, 2008 of the consequences of failure to respond to the pending Motion for Summary Judgment. In a Memorandum and Recommendation entered on January 6, 2009, United States Magistrate Judge Dennis L. Howell has recommended entry of summary judgment in favor of the Sanfords, reserving any issue about fees and costs. Unum and the Sanfords having consented through counsel to entry of this Consent Judgment, and consistent with the Memorandum and Recommendation, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Due to the failure of Brian K. Lewis to respond to the Complaint, the allegations in the Complaint in Interpleader are deemed admitted as to that Defendant.

2. By the enrollment form attached to the Complaint as Exhibit B, Donna Lewis designated Mr. Lewis as primary beneficiary, and Brenda Sanford (60%) and Cynthia Sanford (40%) as contingent beneficiaries. By his execution of the Disclaimer dated November 19, 2008, Mr. Lewis has disclaimed any claim he may have to the insurance proceeds at issue. Further, as a result of his guilty plea to second degree murder of Donna Lewis, Mr. Lewis is a “slayer,” as defined by N.C.G.S. § 31A-3(3), and is therefore barred from receiving insurance benefits by N.C.G.S. § 31A-11.

3. The contingent beneficiaries Brenda Sanford and Cynthia Sanford are entitled to receive the benefits at issue.

4. Unum will pay the life and accidental death benefits into the Registry of the Court, totaling \$76,000.00, with applicable interest pursuant to N.C.G.S. § 58-58-110, and upon

such payment, shall be discharged from further liability under its group policy no. 533525 002, on account of the death of Ms. Lewis.

5. Following receipt, the Clerk will pay Unum a total of \$1500.00, consisting of \$500.00 for its filing and service costs incurred in this action, and \$1,000.00, as a portion of its attorney's fees. Sixty percent (60%) of the balance shall be paid to Defendant Brenda Sanford, and forty percent (40%) to Defendant Cynthia Sanford.

6. The action is dismissed with prejudice, with each party to bear its/his/her own costs, except as otherwise provided herein.

Signed: January 15, 2009



Lacy H. Thornburg  
United States District Judge



WE CONSENT:

/s/ George K. Evans, Jr.  
Attorney for Plaintiff  
Unum Life Insurance Company of America

/s/ W. Perry Fisher, II  
Attorney for Brenda Sanford and Cynthia Sanford